

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: November 17, 2015

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Re: Case No. 15-5866, *Leighann Tuck v. Suncrest Health Care*
Originating Case No. : 3:12-cv-01090

Dear Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Renee M. Jefferies
Case Manager
Direct Dial No. 513-564-7021

cc: Mr. Keith Throckmorton

Enclosure

No mandate to issue

No. 15-5866

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEIGHANN TUCK,

Plaintiff-Appellant,

v.

SUNCREST HEALTH CARE,

Defendant-Appellee.

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)**FILED**

Nov 17, 2015

DEBORAH S. HUNT, Clerk

ORDER

Before: NORRIS, ROGERS, and WHITE, Circuit Judges.

Leighann Tuck appeals the judgment for Suncrest Health Care in this action, brought under the Americans with Disabilities Act and the Family and Medical Leave Act, arising from her termination. The clerk ordered her to show cause why her appeal should not be dismissed as untimely. Tuck responds, and Suncrest replies.

Tuck had thirty days from the entry of judgment in which to file a timely notice of appeal. Fed. R. App. P. 4(a)(1)(A). The district court entered its judgment on July 10, 2015. Thus, Tuck's notice of appeal was due on August 10, 2015. *See* Fed. R. App. P. 26(a)(1). But Tuck filed her notice of appeal one day late, on August 11, 2015. The district court may extend the time to file a notice of appeal if the party: (1) moves for an extension no later than thirty days after the period for filing the appeal expired; and (2) shows excusable neglect or good cause for the untimely filing. Fed. R. App. P. 4(a)(5)(A)(i)–(ii). Tuck moved the district court for an extension of time on September 18, 2015, thirty-nine days after her notice of appeal was due.

No. 15-5866

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Tuck acknowledges that her appeal was untimely filed, but argues that the appeal should not be dismissed before her motion for extension, timely filed under Tennessee Rule of Appellate Procedure 4(a)(5), is disposed of by the district court. The Federal Rules of Appellate Procedure govern appeals before us, not Tennessee's Rules of Appellate Procedure. The deadline for filing a notice of appeal under Rule 4(a)(1)(A) is mandatory and jurisdictional. *See Ultimate Appliance CC v. Kirby Co.*, 601 F.3d 414, 415 (6th Cir. 2010). Under the federal rules, Tuck's notice of appeal is untimely. And, because she filed her motion for extension beyond the thirty day period prescribed, the district court lacks authority to grant that motion. *See Ultimate Appliance*, 601 F.3d at 416; *see also Bowles v. Russell*, 551 U.S. 205, 214 (2007) ("Today we make clear that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement . . . [and that we have] no authority to create equitable exceptions to jurisdictional requirements."). Thus, Tuck cannot cure the untimely filing of her notice of appeal.

The appeal is **DISMISSED**, *sua sponte*, for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk